

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA,
CLARKSBURG DIVISION

WEST VIRGINIA UNIVERSITY)
HOSPITALS, INC., UNITED HOSPITAL)
CENTER, INC., WEST VIRGINIA)
UNIVERSITY HOSPITALS-EAST, INC.,)
CITY HOSPITAL FOUNDATION, INC.,)
and WEST VIRGINIA UNITED HEALTH)
SYSTEM, INC.,)

Plaintiffs,)

v.)

UBS FINANCIAL SERVICES, INC. and UBS)
SECURITIES, L.L.C.,)

Defendants.)

Civil Action No. 1:10-cv-00097-FPS

JOINT MOTION

Plaintiffs West Virginia University Hospitals, Inc., United Hospital Center, Inc., West Virginia University Hospitals-East, Inc., City Hospital Foundation, Inc., and West Virginia United Health System, Inc. (collectively “WVUH”) and defendants UBS Financial Services, Inc. and UBS Securities LLC (collectively “UBS”) hereby jointly move the Court to stay all proceedings in this case (the “West Virginia Action”).

In support of this motion, WVUH and UBS jointly state:

1. This dispute arises out of auction rate securities issued by WVUH for which UBS acted as underwriter and auction broker-dealer. WVUH contends that UBS violated certain legal duties to it in connection with these securities. UBS denies any wrongdoing. Aspects of the dispute are now pending in three different fora:

- a. On February 12, 2010, WVUH filed an arbitration claim against UBS with the Financial Industry Regulatory Authority (the "FINRA Arbitration").
- b. Also on February 12, 2010, WVUH filed the West Virginia Action, raising the same issues as the FINRA Arbitration. WVUH filed the West Virginia Action as a protective measure in the event that the dispute is deemed not to be arbitrable.
- c. On May 28, 2010, UBS filed an action captioned *UBS Financial Services, Inc. et al. v. West Virginia University Hospitals, Inc. et al.*, 10 CV 4298 (VM), in the United States District Court for the Southern District of New York (the "New York Action"). In the New York Action, UBS seeks a ruling that the parties' dispute is not arbitrable under FINRA rules; a ruling that the parties' dispute can only be heard in New York pursuant to certain choice of forum agreements; and a declaratory judgment that UBS did not violate any legal duty to WVUH in connection with the auction rate securities. UBS served on WVUH a motion for a preliminary injunction, seeking an order that the dispute is not arbitrable and can only be heard in a New York court.

2. On June 3, 2010, WVUH advised UBS of the existence of the West Virginia Action and asked that UBS accept service of the complaint. UBS had no prior knowledge of the West Virginia Action. Both parties subsequently agreed to waive service of the New York Action and the West Virginia Action simultaneously.

3. There is a case pending in the United States Court of Appeals for the Second Circuit that presents the issue of whether disputes of this kind are arbitrable under the FINRA rules. *JP Morgan Securities, Inc. v. Louisiana Citizens Property Insurance Corp.*, Second Circuit Docket No. 10-2183. The *JP Morgan* appeal also presents issues regarding the venue of FINRA arbitration. It is anticipated that the Second Circuit's ruling will clarify, if not resolve, the issue of arbitrability as between WVUH and UBS.

4. Accordingly, WVUH and UBS agree that it would not be efficient to pursue their dispute in any forum until the Second Circuit rules in *JP Morgan*. WVUH and UBS have agreed to stay the FINRA Arbitration and the New York Action. In addition, on June 30, 2010, they agreed to stay UBS's deadline to answer in the West Virginia Action, and on July 1, 2010, the Court approved this agreement.

5. To further clarify the status of the West Virginia Action, the parties now request that the Court stay all further proceedings. The purpose of this request is to ensure that the Court and the parties do not unnecessarily expend resources before the Second Circuit has ruled in *JP Morgan* and the Southern District of New York has ruled thereafter on UBS's motion for preliminary injunction.

WHEREFORE, WVUH and UBS hereby jointly move the Court to vacate its First Order and Notice Regarding Discovery and Scheduling, dated June 28, 2010, and to stay all deadlines and proceedings in this action until 30 days after the docketing of any order by the United States District Court for the Southern District of New York denying on the merits UBS's motion for a preliminary injunction in the New York Action. This stay is without prejudice to the parties' rights to appeal to the United States Court of Appeals for the Second Circuit from any rulings in the New York Action. Each of WVUH and UBS reserves the right to apply to this Court for an order lifting the stay at an earlier date upon a showing of good cause.

Dated: July 29, 2010

WEST VIRGINIA UNIVERSITY
HOSPITALS, INC., UNITED HOSPITAL
CENTER, INC., WEST VIRGINIA
UNIVERSITY HOSPITALS-EAST, INC.,
CITY HOSPITAL FOUNDATION, INC.,
and WEST VIRGINIA UNITED HEALTH
SYSTEM, INC.,

Plaintiffs,

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